

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 433 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

MOIZ ASGARALI BHARATU

Versus

LEGALA HEIRS & REP. OF DECD. DESAI CHATURBhai DARBAR

Appearance:

MR DC DAVE for Petitioner
Mr. HM PARIKH for respondents.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/11/1999

ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties. This revision and the contentions raised therein by the respondents appeared to me to be much ado about nothing.

2. The pertinent facts in brief, which are not in dispute, are as under:

2.1 The present petitioner as plaintiff filed a suit in the civil court contending that he is a tenant of the premises in question and that he is entitled to carry out tenantable repairs and sought a corresponding decree for

such a declaration. In the said suit the petitioner plaintiff filed an application Exh.5 to permit him to carry out tenantable repairs. This application Exh.5 was granted by the trial court and in an appeal by the respondent defendant, also confirmed by the appellate court. Thus, there is no dispute that under the confirmed order passed below Exh.5 the petitioner plaintiff is entitled to carry out tenantable repairs on the property which is the subject matter of the suit.

3. The main controversy raised in the present revision revolves around whether the petitioner should be permitted to make construction under the supervision or through the agency of a Commissioner, whether a Commissioner can or should be appointed for this purpose, and as to whether such an application could be entertained in view of the earlier application at Exh.41.

4. To my mind these are all academic questions and do not address the root of the matter.

5. Learned counsel for the opponent no.3 against whom allegations of obstruction to construction are made, states that the third respondent, his family members and associates have not in the past created any obstruction to the construction, and in future they do not intend to do so. In view of this situation it is not necessary to go into the technicalities as to whether the plaintiff should be permitted to carry out the construction as permitted by order below Exh.5 on his own or with the assistance of the police, if necessary. It is only the intervention of the Court Commissioner which has created the dispute.

6. On the facts and circumstances of the case and in view of the statement of learned counsel for the third respondent, interests of justice would best be served by permitting the present petitioner plaintiff to carry out the construction of tenantable repairs in terms of the order passed below Exh.5 by the trial court, and during the course of such construction or in initiating the construction if any obstruction is raised by any party, the petitioner shall be entitled to seek and obtain police protection in order to permit him to make the necessary construction. It is so directed.

7. It is also directed by consent that the suit should be decided as expeditiously as possible. For this purpose it is directed that the trial court shall hear and decide the suit as expeditiously as possible and in any case not later than 30th March 2000. It is

further clarified that if the suit is not disposed of by the stated date and if the trial court is of the view (after hearing the other side), that the non-disposal of the suit as directed is on account of the plaintiff, the trial court shall be at liberty to dismiss the suit for want of prosecution.

8. In view of the observations and directions no further questions survive in the present revision and the same is accordingly disposed of. Rule is made absolute to the aforesaid extent.
